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Response to a first Office Action

Application Ser. No. 10/613,850

This communication is a response to a first Office Action having a mailing date of 09/23/2004 setting forth a shortened statutory period for response of three months which would expire on 12/23/2004.

The examiner has used six consecutive paragraphs to object to and reject the claims. The same sequence will be followed by the applicant,

Par. 1. Claim 5 has been rejected under 35 U.S.C. 112, second paragraph as being indefinite. The examiner's suggestion will be followed on a separate page.

Par. 2. Quotation of 35 U.S.C. 103(a).

Par. 3. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brooks '462. The examiner states "Fig. 1 of Brooks, shows a single ball holder. The fact that the shape of the second bends, A and D, of Brooks are L- shaped rather than U-shaped is considered to be a matter of choice and design". The question is who makes this consideration? If the second bends A and D of Brooks are made U-shaped, the device of Brooks cannot hold a ball any longer because the U-shaped ring of Brooks would droop down and could not hold a ball. The ball holder of Brooks in Fig. 1 needs a wall to hold the ball in place, while applicant's ball is only supported by the single rod that is bent back on itself, as is claimed and further no wall or other element needs to support the ball. Where in Brooks is a first substantial U - shaped form to thereby form two substantially parallel legs in a plane and the parallel legs are again bent into a second U - shaped form which is substantially turned 90° from said first U - shape. The single rod of Brooks cannot be bent as claimed. The way the applicant's ball holder is bent is not a matter of choice and design and took a lot of experimentation to arrive at the claimed results. If the examiner insists upon rejecting claims 1 and 2 in the same manner, he

is invited to supply a sketch to support his contention.

Par. 4. Claims 1, 2, 4, and 5 are rejected under 35 U.S.C. 104(a) as being unpatentable over Brooks '462 in view of Knable 6,601,711. The examiner holds it to be obvious to substitute a single mounting bracket for the pair of mounting brackets on Brooks as taught by Knable. While Knable shows a single mounting bracket which is molded into the ball support ring, this teaching cannot be applied to Brooks because the support ring of Brooks is a wire ring and it is not molded. Besides, the inapplicability of Brooks has been discussed above.

Par. 5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brooks '462 in view of Knable '711 and further in view of Smith '460. The examiner is modifying a secondary reference with a third reference and then using this modification to modify a first reference. This kind of rejection is frowned upon by the Board of Appeals, the old CCPA and the CAFC.

Par. 6 Claims 6 and 7 are objected to as being dependent upon a rejected claim but would be allowable if rewritten in independent form. The applicant will hold this rewriting in abeyance based on the reconsideration of the examiner's above rejections.


Thomas Kershaw

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First Named Inventor

Thomas Kershaw

Art Unit

3634

Examiner Name

R.W. Gibson

Attorney Docket Number

ENCLOSURES

(Check all that apply)

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Fee Transmittal Form

☐

Fee Attached

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Amendment/Reply

☐

After Final

☐

Affidavits/declaration(s)

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Extension of Time Request

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Express Abandonment Request

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Information Disclosure Statement

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Certified Copy of Priority Document(s)

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Reply to Missing Parts/Incomplete Application

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Reply to Missing Parts under 37 CFR 1.52 or 1.53

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Drawing(s)

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